

AG Contract No.: P001-2007-001860
JPA File No.: **07-094I**
Project No.: 010-B(201)A
Project: I-10 Median Widening
Section: Sarival Avenue to SR 101L,
(I-10 & 107th Avenue Overpass)
TRACS No.: 010 MA 125 H7096 01D/01C
Budget Source Item No.: 43408

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF AVONDALE

THIS AGREEMENT is entered into October 30, 2007 pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF AVONDALE, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes, § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by the City Charter, Section 3, Article I, to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Incident to the State's design and construction project along Interstate 10 (I-10) between Sarival Avenue and State Route 101L, the City requests the State incorporate the design and construction of a new traffic interchange overpass structure at 107th Avenue and I-10 (the "New Structure"), to accommodate the City's future widening of 107th Avenue. The State's design concept required widening of the existing structure; the City's request requires replacing the existing structure. The additional cost to design the New Structure to replace the existing structure is estimated at \$78,750.00 and the cost to construct the New Structure is \$3,959,919.00. The design and construction of the New Structure is hereinafter referred to as the "Project". The State and the City agree to split the cost of design and construction of the Project, including construction engineering and administration costs, as shown on Exhibit A, attached hereto and made a part hereof. Project payments are based on a schedule provided in the Scope of Work herein, and agreed to by the City.

NO. 29384
Filed with the Secretary of State
Date Filed: 10/30/07

Secretary of State
D.C. ABO

4. Following completion of the New Structure, the City shall accept the responsibility of electric power as well as the operation and maintenance of the traffic signals at 107th Avenue and I-10 and the under-deck lighting for the New Structure. The City's obligation to provide electrical power for, and maintain such under-deck lighting and traffic signals will be set forth in an intergovernmental agreement to be executed by the State and the City subsequent to the date of this Agreement.

5. The Project plans are 100% complete and the City and the State have reviewed and approved the plans.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The City shall:

a. Upon execution of this Agreement, designate the State as authorized agent on behalf of the City relative to the Project.

b. Be responsible for any design consultant costs and contractor claims for additional compensation caused by or attributable to the City relative to the design and construction of the Project.

c. Be responsible for 50% of the Project costs, an estimated total amount of \$2,019,334.50 payable as follows:

- \$300,000.00 – within 30-days upon receipt of an invoice from the State following award of a construction contract by the State Transportation Board.
- \$300,000.00 – within 30-days upon receipt of an invoice from the State not less than 120 days after award of a construction contract by the State Transportation Board.
- \$1,419,334.50 – within 30-days upon receipt of an invoice from the State after July 1, 2008.

d. Remit to the State within 30-days upon receipt of an invoice, in accordance with the schedule provided herein, for the City's estimated 50% participation in the cost of the Project, which includes fixed rates and fixed costs, as described herein and shown on Exhibit A.

e. Be responsible for routine maintenance of 107th Avenue under the I-10 Papago Freeway, consistent with established City standards. ***Routine maintenance** is defined as: activities such as sweeping; crack sealing; removal of spills and debris; graffiti removal; repair of potholes; leveling and/or patching of asphalt pavement with Premix; litter and trash removal; minor replacement of the surface/base of damaged pavement; presenting a safety hazard and/or any other established procedure routinely conducted by the City to preserve and keep the roadway surface and general area in a safe and operable state of repair.

f. Upon completion and acceptance of the Project be responsible for 50% of the Project costs incurred by the State for said work. If necessary, reimburse the State within 30-days upon receipt of an invoice, any difference between the estimated amount paid by the City and the actual costs to design and construct the Project, which includes fixed rates and fixed costs, as shown on Exhibit A.

2. The State shall:

- a. Upon execution of this Agreement, agree to be the authorized agent for and on behalf of the City relative to the Project.
- b. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project and submit them to the City for comments as appropriate.
- c. Invoice the City in accordance with the following schedule:
 - \$300,000.00 - within 30-days after award of the construction contract by the State Transportation Board,
 - \$300,000.00 - no less than 120-days after award of the construction contract by the State Transportation Board;
 - \$1,419,334.50 - on or before July 1, 2008;
- d. Advertise for bids and award one or more construction contract(s) for the Project. Administer the contract(s) and make all payments to the contractor(s).
- e. Upon completion of the Project, perform the final inspection and notify the City in writing the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.
- f. Upon completion of inspection and acceptance of the Project by the State, be responsible for the structural integrity of the I-10 overpass at 107th Avenue and provide maintenance within the State's control of access.
- g. Upon completion and acceptance of the Project, if necessary, invoice the City any difference between the estimated amount received by the City and the actual costs to design and construct the Project, which includes fixed rates and fixed costs, as shown on Exhibit A.
- h. Upon completion and acceptance of the Project by the State, be responsible for the structural integrity of the I-10 overpass at 107th Avenue and provide maintenance within the State's control of access.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in full force and effect until completion of said Project and all reimbursements; provide however, that this Agreement, except any provisions herein for maintenance which shall be perpetual, may be cancelled at any time prior to the award of a Project advertisement, with 30-days written notice to the other party. It is understood and agreed that, in the event the City cancels this Agreement, the City shall be responsible for all costs incurred by or on behalf of the City.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes, § 38-511.

5. All books, accounts, reports, files and other records of either party relating to the Agreement or the work done under this Agreement shall be subject at all reasonable times to inspection and audit by the other party. Such records shall be available for inspection upon five business days' notice at the offices of the party in possession of the records.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy between the City and the State, which may arise out of this Agreement, the parties hereby agree to abide by binding arbitration.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Avondale
City Manager
11465 West Civic Center Drive, Suite 120
Avondale, AZ 85323

10. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

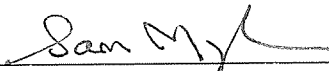
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF AVONDALE

STATE OF ARIZONA

Department of Transportation

By 
MARIE LOPEZ-ROGERS
Mayor

By 
SAM MAROUFKHANI
Deputy State Engineer, Intermodal Transportation

ATTEST

By 
LINDA FARRIS
City Clerk

EXHIBIT A
SUMMARY

I-10 (PAPAGO), SARIVAL AVENUE - SR 101L
DESCRIPTION AND COST OF PAY ITEMS FOR CITY OF AVONDALE ENHANCEMENTS

Item	Cost		Description
	Design	Construction	
107th Avenue Structure Replacement	\$156,536.00	\$4,637,150.00	Replacement of structure to facilitate future crossroad widening.
Credit for programmed widening	(\$81,536.00)	(\$959,115.00)	Credit for structure widening as scoped.
Credit for unprogrammed future widening.		(\$532,496.00)	Additional 24 feet in structure width for future I-10 widening.
SUBTOTAL	\$75,000.00	\$3,145,539.00	\$3,220,539.00
14% Construction Engineering and Administration		\$444,779.21	Construction Engineering and Administration is calculated on a percentage basis of the net construction costs.
Contract Lump Sum Items		\$369,600.83	Includes mobilization, contractor quality control and construction survey and layout calculated on a percentage basis of the net construction costs.
5% Engineering Administration	\$3,750.00		Engineering administration is calculated on a percentage basis of the net design costs.
TOTAL	\$78,750.00	\$3,959,919.05	\$4,038,669.05

**EXHIBIT A
SUMMARY BACKUP**

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	107th Ave Bridge Replacement				
2					
3					
4	Bridge structure, including removal	L.Sum	1	\$4,317,150	\$4,317,150
5	Drilled shaft foundations	L.Sum	1	\$320,000	\$320,000
6					
7	Structure Subtotal				\$4,637,150
8					
9	Credit for scoped median widening	L.Sum	(1)	\$959,115	(\$959,115)
10	Credit for outside widening	L.Sum	(1)	\$532,496	(\$532,496)
11	24' additional / 209' total x Structure Subtotal				
12					
13	Construction Subtotal				\$3,145,539 (A)
14					
15	Construction Surveying and Layout Share ¹	Percent of (A)	1	1.00%	\$31,455
16	Contractor Quality Control Share ¹	Percent of (A)	1	0.75%	\$23,592
17	Mobilization Share ¹	Percent of (A)	1	10.00%	\$314,554
18					
19	Contract Subtotal				\$369,601 (B)
20					
21	Construction Engineering and Administration	Percent of (A+B)	1	14%	\$444,779
22					
23	Construction Total				\$3,959,919 (A+B+C)
24					
25	107th Ave Bridge Design				
26					
27	Design Engineering	Actual	1	\$75,000	\$75,000
28	Design Engineering Administration	Percent of (D)	1	5%	\$3,750
29					
30	Design Total				\$78,750 (D)

Notes:

1 - These items calculated on a percentage basis and are based on typical Valley projects and are applied to the cost of the City's items.

RESOLUTION NO. 2687-1007

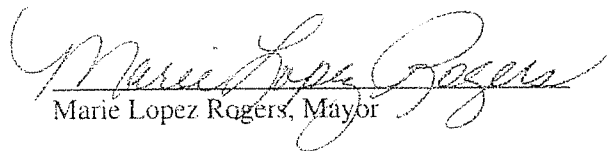
A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO DESIGN AND CONSTRUCTION OF A TRAFFIC INTERCHANGE OVERPASS STRUCTURE AT 107TH AVENUE AND INTERSTATE 10.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the Intergovernmental Agreement with State of Arizona regarding the design and construction of a traffic interchange overpass structure at 107th Avenue and Interstate 10 (the "Agreement") is hereby approved in the form attached hereto as Exhibit A.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

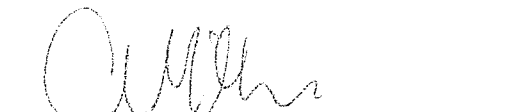
PASSED AND ADOPTED by the Council of the City of Avondale, October 1, 2007.


Marie Lopez Rogers, Mayor

ATTEST:


Linda M. Farris, City Clerk

APPROVED AS TO FORM:


Andrew J. McGuire, City Attorney

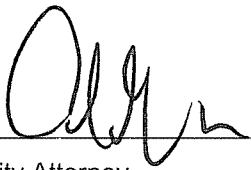
JPA 07-094

ATTORNEY APPROVAL FORM FOR THE CITY OF AVONDALE


I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF AVONDALE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 17th day of OCTOBER, 2007.



City Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007001860 (**JPA 07-094-I**), an Agreement between public agencies, i.e., The State of Arizona and The City of Avondale, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: October 22, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:80017
Attachment